

John Lyde, Plaintiff,

Thomas Rodd, an Attorney of the Court of  
Queens-Bench, Defendant.

Upon a Writ of Error in Parliament, to Reverse a Judgment of the said Court of *Queens-Bench* given against the Plaintiff, in a Special Action upon the Case.

(The Plaintiff's C A S E.)

Judgment enter'd up against  
the Plaintiff, 14 Maii,  
4 Annæ Reg.

Bill in Chancery exhibited,  
17 Feb. 1704.

Dismiss'd 29 June, 1706.  
Bill filed by the Plaintiff a-  
gainst the Defendant in the  
Court of Queens-Bench,  
Trin. Term 8 Annæ Reg.

Verdict given for the Plain-  
tiff, 20 Aug. 8 Annæ Reg.

Judgment Arrested, Mich.  
Term, 8 Annæ Reg.

**T**HE Defendant without any Authority, Consent or Privity of the Plaintiff, having caused an Appearance to be Enter'd in the Plaintiff's Name, and Confess'd a Judgment thereupon, in an Action of Debt of 100*l.* brought against the Plaintiff in the Court of *Common-Pleas*, at the Suit of one *Hugh Rodd*; did afterwards in like manner, without the consent or knowledge of the Plaintiff, exhibit in the Plaintiff's Name a Bill in *Chancery*, praying Relief against the said Judgment: Which Bill was afterwards dismiss'd with Costs, and the Plaintiff, to his great surprize, by Process serv'd upon him in the County of *Hereford* where he lived, compell'd to pay for the Costs of such Dismission the Sum of 28 *l.*

For Recovery of which Money against the Defendant, who had Commenced and Prosecuted the said Suit, without any Authority from the Plaintiff, the Plaintiff filed a Bill in the Court of *Queens-Bench* against the Defendant, being one of the Attorneys of that Court, and laid his Action in *Herefordshire*, where he sustain'd his Damages.

To which the Defendant appear'd, and pleaded the General Issue, submitting to a Tryal of the Action by a Jury of the County of *Hereford*; and accordingly the Cause was Tryed at *Hereford*, before Mr. Justice *Powell*, where after a full Defence made by the Defendant, and near 20 Witnesses Examind on both sides, the Plaintiff having proved his Declaration, and it appearing plainly to the Jury, that the Proceedings in *Chancery* were had and carried on by the Defendant *Rodd*, without the Plaintiff's Consent or Privity, a Verdict was found for the Plaintiff, and 28 *l.* Damages, and 40*s.* Costs assess'd against the Defendant.

The Plaintiff hoped to have had the Benefit of the said Verdict, but upon a Motion in Arrest of Judgment, the Court of *Queens-Bench* hath given Judgment against the Plaintiff; the Action, as they judged, being only Tryable by a Jury in *Middlesex*, the Court of *Chancery* (tho' it be Transitory and not Local) being then held in *Middlesex*, and the Proceedings by which the Damages accrued being had there. Whereby the Plaintiff is debarr'd of the said Verdict, and his Costs and Damages assess'd by the Jury, after so solemn a Tryal had in the County where both Parties lived, and where the Defendant's deceitful Contrivance was, and where the Plaintiff's Damages were sustain'd, and so alledg'd to have been in the Declaration.

And therefore the Plaintiff hath brought a *Writ of Error* for Reversing the said Judgment, and humbly hopes, and is advised, that the said Judgment is Erroneous.

First, For that the Plaintiff's Cause of Action arising in two Counties, viz. the Defendant's Contrivance and actual Damages to the Plaintiff, being in the County of *Hereford*, and the Exhibiting of the Bill in the County of *Middlesex*, the Plaintiff, as he humbly conceives, and is advised, was at liberty to bring and try his Action in either County; and that by the strictest Rules of the Common Law, and after a Verdict obtained, which is of great Esteem and Favour in the Law, as supplying by the Proofs, and by the finding of the Jury many things that would otherwise be taken for Defects, and be intended against the Plaintiff, barely upon his Declaration, Judgment ought not to be Arrested or given against him.

Secondly, But should there be any doubt of the Clearness of the Plaintiff's Case at Common Law, yet he humbly hopes, that he is entitled to the aid (if wanting) of the several Statutes passed for the Amendment of the Law, particularly the 16 and 17 Car. II. cap. 8. which enacts, that after a Verdict Judgment shall not be stayed; For that there is no right Venue; so as the Cause be Tried by a Jury of the proper County or Place where the Action is laid. And of the 4 and 5 of Annæ Reg. cap. 16. whereby it is Provided, That the Judges shall give Judgment (even in Cases upon a Demurrer) according as the very Right and Matter in Law shall appear unto them, without regarding any Imperfection, &c. of any Declaration, &c. so as sufficient Matter appear in the said Pleadings upon which the Court may give Judgment, according to the very RIGHT of the Cause.

For which, and other Reasons humbly to be Offer'd, 'tis hoped this most Honourable House will Reverse the said Judgment of the Court of *Queens-Bench* with Costs, and give such other Judgment for the Plaintiff as the Court of *Queens-Bench* ought to have given: For in case the Plaintiff should be put to a new Action in *Middlesex*, the expence of a Tryal there, and bringing his Witnesses out of *Herefordshire*, would be too great for his Circumstances to bear, and he must sink under his Misfortune, and lose all the Charges he has been at hitherto. And so an Attorney who by his unwarrantable Proceedings hath Ruin'd the Plaintiff and his Family, which consists of a Wife and six Children, will escape unpunish'd.

Abel Ketelbey,  
Joseph Girdler, Jun.